Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1900

IN THE MATTER OF LEGISLATIVE DISTRICTING OF THE STATE

(BEING MISC. NOS. 5-6, SEPTEMBER TERM, 1972, AND MISC. NOS. 1-4 AND 7-13, SEPTEMBER TERM, 1973, IN THE COURT OF APPEALS OF MARYLAND)

PETITION OF NORRIS B. TWILLEY, ET AL. FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

VICTOR H. LAWS,
LONG, LAWS, HUGHES & BAHEN,
124 East Main Street,
Salisbury, Maryland 21801,
Attorneys for Petitioners.

The Daily Record Co., Baltimore, Md. 21202

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PETITION OF NORRIS B. TWILLEY, ET AL. FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

Norris B. Twilley, et al., Petitioners in No. 11 Misc. Cases, September Term, 1973, in the Court of Appeals of Maryland, entitled "In the Matter of Legislative Districting of the State", by Victor H. Laws and Long, Laws, Hughes & Bahen, their attorneys, petition this Honorable Court for Writ of Certiorari to review the final judgment entered therein, and respectfully say:

PROCEEDINGS BELOW

This case has been heard only in the Court of Appeals of Maryland, and there have been no proceedings in the lower Maryland courts or in any lower Federal courts.

GROUNDS FOR JURISDICTION OF THIS COURT

The Order of the Court of Appeals of Maryland was adopted March 15, 1974, was filed March 22, 1974, and is reported 271 Md. 320-334. Said Order in pertinent part is appended hereto as Appendix A. Motion for Reargument was timely filed by these Petitioners on April 15, 1974, and was denied April 29, 1974; copy of letter giving notice of such denial is appended hereto as Appendix B. Said Order

violates Amendment XIV to the Constitution of the United States, Articles 7 and 23 of the Declaration of Rights forming part of the Constitution of Maryland, and Section 4 of Article III of the Constitution of Maryland.

QUESTIONS PRESENTED FOR REVIEW

The questions presented for review relate to the redistricting by said Order of the Maryland Court (Appendix A hereto) of Legislative Districts 35 and 36, involving the Counties of Caroline, Talbot, Dorchester, Wicomico, Somerset and Worcester on the Eastern Shore of Maryland; said questions are:

(a) Whether Petitioners and approximately 9,700 other residents of northwestern sections of Wicomico County, Maryland have been denied their constitutional rights under the Federal and Maryland Constitutions by said Order, which separates them from the main body of Wicomico County, and includes them in the 35th Legislative District with approximately 73,000 residents of the entire Counties of Caroline, Dorchester and Talbot; and

(b) Whether Petitioners and all other residents of Wicomico County (population 54,236) have been denied their constitutional rights under the Federal and Maryland Constitutions by said Order in combination with Section 46(d) of Article 40 of the Annotated Code of Maryland, providing that no county or part of a county, in a multi-county legislative district, may have more than one resident delegate.

CONSTITUTIONAL AND STATUTORY PROVISIONS

The constitutional and statutory provisions here involved are:

Section 1, Amendment XIV, Constitution of the United States

Articles 2, 7 and 23, Declaration of Rights, Constitution of Maryland

Sections 4 and 5, Article III, Constitution of Maryland
Section 46, Subsections a-d, Article 40, Maryland Code Annotated (1971 Replacement Volume)

The pertinent text thereof is set forth in Appendix C hereto.

STATEMENT OF THE CASE

Governor Mandel submitted a Maryland legislative redistricting plan (the "Governor's Plan") which was adopted by the Maryland General Assembly on February 24, 1973, but was challenged by voters in the Court of Appeals of Maryland. Said Court held the plan invalid for lack of compliance with constitutionally mandated public hearings, and appointed a Special Master, the Honorable Hall Hammond, retired Chief Judge of said Court, to hold hearings and make recommendations concerning the Governor's Plan. The Special Master conducted extensive hearings and other proceedings lasting four months. On December 4, 1973, he filed his "Tentative Report and Preliminary Recommendations" finding *inter alia* that the Governor's Plan was unconstitutional as to Legislative Districts 35 and 36. On January 24, 1974, Judge Hammond filed his "Final Report" confirming his tentative finding of unconstitutionality of the Governor's Plan as to Legislative Districts 35 and 36, and submitted his final recommendation for a redistricting plan for same. Said final recommendation of the Special Master is hereafter called the "Hammond Plan".

The Court of Appeals of Maryland then received Briefs and heard oral argument from interested persons, including these Petitioners, and on March 22, 1974, filed its Order (Appendix A hereto), without opinion, adopting neither the Governor's Plan nor the Hammond Plan, but substituting its own final redistricting plan for Legislative Districts 35 and 36 (the "Court's Plan"), quite similar to the Governor's Plan, except that it restored Somerset County as an undivided political subdivision, and further divided Wicomico County.

The population statistics and principal features of the three plans are:

THE GOVERNOR'S PLAN

District 35	*Population*
Caroline — all	19,781
Talbot — all	23,682
Dorchester — all	29,405
Wicomico — (E.D. 1-3, 10, 12)	5,918
Somerset — (E.D. p/o 1, 2, 5, 9, 11, 14)	4,639
	83,425

Deviation -20/-.000%

District 36	*Population*
Worcester — all	24,442
Wicomico — (E.D. 4-9, 11, 13-16)	48,318
Somerset — (E.D. p/o 1, 3-4, 6-8, 10, 12-13, 15)	14,285
	87,045

Deviation +3600/+4.2%

Each district elects three delegates at large.

Eleven election districts, in two counties, separated from the main bodies of their counties.

Wicomico River separates Somerset election districts from balance of District 35.

THE HAMMOND PLAN	
District 35	*Population*
Caroline (E.D. 2-8)	17,894
Talbot — all	23,682
Dorchester — all	29,405
Somerset — all	18,924
	89,905
Deviation +6,460/+7.74%	
District 36	*Population*
Worcester — all	24,442
Wicomico — all	54,236
	78,678
Deviation -4767/-5.71%	

District 35 elects three delegates at large; in District 36, Worcester County and E.D. #14 of Wicomico County elect one delegate, balance of Wicomico County elects two delegates.

One election district in Caroline County separated, all other county boundaries preserved.

Nanticoke River and Tangier Sound separate Somerset County from balance of District 35.

THE COURT'S PLAN	
District 35	*Population*
Caroline — all	19,781
Talbot — all	23,682
Dorchester — all	29,405
Wicomico — (E.D. 1-3, 10-12, 15)	9,668
	82,536
Deviation -909/-1.09%	
District 36	*Population*
Worcester — all	24,442
Wicomico — (E.D. 4-9, 13-14, 16)	44,568
Somerset — all	18,924
	87,934
Deviation +4489/+5.38%	

Each district elects three delegates at large.

Seven election districts, in northern and western Wicomico County, separated from main body of Wicomico County.

Nanticoke River separates Wicomico County residents from balance of District 35.

Outline maps of Maryland (showing county boundaries) and Wicomico County (showing election district boundaries) are appended as Appendices D and E respectively. The division of Wicomico County under the Court's Plan is shown by the heavy black line on Appendix E.

Pertinent parts of Judge Hammond's preliminary and final reports and recommendations are appended as Appendices F and G respectively.

HOW FEDERAL QUESTIONS RAISED IN THE MARYLAND COURT

Since the Constitution of Maryland vested original jurisdiction in this matter in the State's highest court, the Court of Appeals of Maryland, there were no proceedings in lower Maryland courts or in lower Federal courts.

The federal questions were raised by these Petitioners and controverted by the Attorney General of Maryland on behalf of the Governor at all stages of the proceedings in the Court of Appeals of Maryland, including all proceedings before Judge Hammond as Special Master, as evidenced by the following documents.

Date of Filing	*Nature of Document*	*Pertinent Part Appended Hereto As Appendix*
September 27, 1973	Petition (of these Petitioners) to Intervene, etc. alleging unconstitutionality of the Governor's Plan under Federal and Maryland Constitutions	H
October 9, 1973	Answer of the Governor of Maryland denying unconstitutionality of his Plan	I
December 29, 1973	Memorandum (of these Petitioners) Concerning Tentative Report and Preliminary Recom-	J

	mendations of Special Master, suggesting changes therein	
January 3, 1974	Memorandum of the Maryland Attorney General regarding Tentative Report and Preliminary Recommendations of Special Master, defending the Governor's Plan as constitutional and requiring no changes	K

Additionally, after the Special Master's Final Report (Appendix G hereto) was filed January 24, 1974, these Petitioners again raised the federal questions before the Maryland Court, both by written Brief and in oral argument, urging the constitutionality of the Hammond Plan and the unconstitutionality of the Governor's Plan on federal constitutional grounds. The Maryland Attorney General likewise filed a Brief defending the federal constitutionality of the Governor's Plan. The final Order (without opinion) of the Maryland Court, Appendix A hereto, and its denial of Motion for Reargument, Appendix B hereto, were a complete and final denial of Petitioners' objections and arguments on federal constitutional grounds, and were the final actions taken by the Maryland Court in this matter.

ARGUMENT

A. The Court's Plan effectively disenfranchises approximately 9,700 residents of Wicomico County Election Districts 1, 2, 3, 10, 11, 12 and 15 by placing them in Legislative District 35, where they are hopelessly outnumbered by the 73,000 residents of Caroline, Talbot and Dorchester Counties, with the result that their voting power (i.e., the individual or combined weight of their votes) is not and cannot be substantially equal to the voting power of residents in the balance of said Legislative District 35 who live in Caroline,

Dorchester and Talbot Counties and make up more than 88% of total District 35 population. Such result violates the constitutional rights of said Wicomico County residents in said precincts to equal protection of law and due process of law under the Maryland Constitution and the United States Constitution. *Mahan v. Howell*, 410 U.S. 315, 93 S. Ct. 979, 984-5 (1973); *Reynolds v. Sims*, 377 U.S. 533 (1964).

In *Mahan*, where the Virginia constitutional mandate was far weaker than Section 4, Article III of the Maryland Constitution (see Appendix C hereto), and required only "contiguous and compact territory" in Virginia legislative districting, this Court upheld a Virginia legislature's plan preserving county lines and containing population deviations up to 16%. In so doing, this Court struck down a plan of the Federal District Court, which sacrificed county lines and political realities for the sake of greater uniformity of population. This Court spoke in eminently practical terms and the language, if applied to the instant case, fits like a glove:

> "The court's reapportionment, based on its application of *Kirkpatrick* and *Wells*, resulted in a maximum deviation of slightly over 10%, as compared with the roughly 16% maximum variation found in the plan adopted by the legislature. But to achieve even this limit of variation, the court's plan extended single and multimember districts across subdivision lines in 12 instances, *substituting population equality for subdivision representation.* Scott County, for example, under the Assembly's plan was placed in the first district and its population of 24,376 voted with the 76,346 persons in Dickinson, Lee and Wise Counties for two delegates. The district thus established deviated by 8.3% from the ideal. The court transferred five of Scott County's enumeration districts, containing 6,063 persons, to the contiguous second district composed of the City of Bristol and Smyth and Washington Counties, population

87,041. *Scott County's representation was thereby substantially reduced in the first district, and all but nonexistent in the second district.* The opportunity of its voters to champion local legislation relating to Scott County is virtually nil. The countervailing benefit resulting from the court's readjustment is the fact that the first district's deviation from the ideal is now reduced to 1.8%.

"The City of Virginia Beach saw its position deteriorate in a similar manner under the court-imposed plan. Under the legislative plan, Virginia Beach constituted the 40th district and was allocated three delegates for its population of 172,106. The resulting underrepresentation was cured by providing a floterial district, the 42d, which also included portions of the Cities of Chesapeake and Portsmouth. Under the court's plan, the 42d district was dissolved. Of its 32,651 persons that constituted the deviation from the ideal for the 40th district, 3,515 were placed in the 49th, and 29,136 were transferred to Norfolk's 39th district. The 39th district is a multimember district which includes the 307,951 persons who make up the population of the City of Norfolk. *Thus those Virginia Beach residents who cast their vote in the 39th district amount to only 8.6% of that district's population. In terms of practical politics, Virginia Beach complains that such representation is no representation at all so far as local legislation is concerned, and that those 29,136 people transferred to the 39th district have in that respect been effectively disenfranchised.*" (93 S. Ct. 979, 984-5; emphasis added.)

B. In combination with Section 46(d) of Article 40, Annotated Code of Maryland (quoted in Appendix C), providing that no county or part of a county may have more than one resident delegate in a multi-county district, the Court's Plan guarantees a resident delegate to the 18,924 Somerset County residents, and a resident delegate to the 24,442 Worcester County residents, while denying more than one resident

delegate to the 44,568 eastern Wicomico County residents in the same Legislative District 36, despite the fact that they are two and one-half times the Somerset population, nearly two times the Worcester population, and more than the combined Somerset and Worcester population. This result is conceded by the Attorney General of Maryland, and astonishingly, the Attorney General argues that this result is desirable and gives "greater cognizance" to the counties, ignoring the blatant disparity in the weight of votes throughout the district, and the serious underrepresentation of the Wicomico County residents.

The Maryland Attorney General and the Maryland Court, in adopting the Court's Plan, have lost sight of the mandate of this Court to give substantially equal weight to all votes in each district, while giving due regard to political subdivisions and political realities. The Maryland Attorney General suggests that it is impossible to do so, but the Hammond Plan demonstrates that it can be done in Maryland Legislative Districts 35 and 36. The Hammond Plan faithfully followed the rulings of this Court. In the Hammond Plan, 53,152 Wicomico residents would have elected two resident delegates, the Worcester County 24,442 residents with one Wicomico County precinct of 1,084 population would have elected one resident delegate, and the disparity in voting power and representation would have been minimal.

The constitutional rights of Petitioners to equal protection of law, due process of law and equal representation in the Maryland General Assembly are denied by the Court's Plan in violation of the Maryland Constitution and the United States Constitution. *Mahan v. Howell* and *Reynolds v. Sims*, both *supra; Secretary of State, et al. v. Bryson*, 244 Md. 418 (1966), construing a 1965 statute imposing residence qualifications in State senatorial primary elections.

In the case last cited, the same Maryland Court clearly held that such result offended both Constitutions, and the Court even forecast the instant case:

> "When, as in the Section here involved, there is a substantial malapportionment between the sub-districts (the counties), the one-man one-vote principle is violated both as between the voters in the counties and in the district as a whole. The voters of the district, in the primary, are confined in their choice by the county residences of the candidates, even though the counties have manifestly unequal populations, instead of having the right to choose between candidates from substantially equal sub-districts. The provisions as to the primaries contained in the Section are only applicable, under the Act, to the three districts to which the Section pertains, and therefore the residential requirements of the Section, based on disproportionate county populations, result in substantial inequalities in voting rights between the voters in those three districts and the voters in the other thirteen districts. The voters in the counties, insofar as the candidates represent them by reason of their residence, have their votes magnified or diluted by reason of the disparities in population between the counties in the district.
>
> "The invalidity of the Section, under the one-man one-vote principle, is clear. Frederick and Carroll Counties have populations in the respective approximate proportions of 7 to 5. Under the operation of the Section, Frederick County could have two nominees in the primary of one party while Carroll County would have none. In District 15 or 16, which, respectively are comprised of five and four counties, one county could have just short of a majority of the population of the entire district and another county a small proportion of the district's voters, yet the smallest and the largest counties would each have the right to one nominee." (244 Md. 418, 427-8).

It should be noted that "District 16", mentioned in the Court's Opinion, was comprised of the same Counties of

Dorchester, Wicomico, Worcester and Somerset here involved.

Recent decisions of this Court on multimember districts do not require a different result. *Dusch v. Davis*, 87 S. Ct. 1554 (1967), also considered substantial population deviations between sub-districts, but had two critical factors not present here: (i) four at-large districts without residence requirements as an "overlay" of the seven sub-districts having residence requirements; and (ii) an unusual and very heterogeneous "city which was not a city", Virginia Beach, Virginia, created by large-scale annexation of very diverse areas ranging from city to suburbs to rural. On such unique facts this Court held that the sub-district residence requirements were not fatal to the plan and did not amount to "invidious" discrimination, but the fact picture in the instant case is quite different. *Gaffney v. Cummings*, 93 S. Ct. 2321 (1973), and *White v. Regester*, 93 S. Ct. 2342 (1973), turn on issues of "political fairness" and racial discriminations not presented here, although *White* illustrates the point here presented that the location or residence of the voters in a multimember district vitally affects the outcome of elections in that district. This Court in *White* affirmed a requirement that multimember districts be cut to single-member districts to give disadvantaged black and Mexican minority groups a chance to win elections in their districts of residence.

Respectfully submitted,

VICTOR H. LAWS,
LONG, LAWS, HUGHES & BAHEN,
Attorneys for Petitioners.

CERTIFICATE OF SERVICE UNDER RULE 33

I HEREBY CERTIFY that on this 19th day of June, 1974, I mailed by regular U. S. mail, postage prepaid, three printed copies of the foregoing Petition for Writ of Certiorari, etc. to each of the following attorneys of record for each other party separately represented in proceedings entitled "In the Matter of Legislative Distributing of the State" before the Court of Appeals of Maryland, at their respective offices, in compliance with Rule 33, Subsections 1 and 3(b) of the Rules of the Supreme Court:

Roger W. Titus, Esquire
James C. Chapin, Esquire
Robert W. Shook, Esquire
George W. Liebmann, Esquire
Howard J. Needle, Esquire
Walter E. Black, Jr., Esquire
Robert H. Levan, Esquire
T. Joseph Touhey, Esquire
Thomas S. Simpkins, Esquire
John F. Somerville, Jr., Esquire
John E. Bohlen, Jr., Esquire
Frank G. Perrin, Esquire
J. Joseph Curran, Jr., Esquire
Honorable Francis B. Burch,
Attorney General of Maryland
James G. Perry, Esquire

VICTOR H. LAWS,
LONG, LAWS, HUGHES & BAHEN,
124 East Main Street,
Salisbury, Maryland 21801.

ORDER TO ENTER APPEARANCE

Mr. Clerk:

Please enter my appearance for Petitioners in this Court in the above matter.

VICTOR H. LAWS

APPENDIX A

In The Court Of Appeals of Maryland

Misc. Nos. 5 and 6
September Term, 1972

Misc. Nos. 1, 2, 3, 4, 7, 8, 9, 10, 11, 12, and 13
September Term, 1973

In The Matter Of Legislative Districting Of The State

ORDER

The legislative districting plan submitted by the Governor of Maryland to the General Assembly of Maryland, setting forth the boundaries of the legislative districts for the election of members of the Senate and House of Delegates, required by § 5 of Article III of the Constitution of Maryland to be prepared following each decennial census of the United States, having become law on February 24, 1973, as Joint Resolution 1 of the Senate and Joint Resolution 2 of the House of Delegates (hereinafter referred to as the Governor's Plan); and

The Governor's Plan having provided, in accordance with, and in implementation of, §§ 2 and 3 of Article III of the Constitution of Maryland, that the State of Maryland be divided into forty-seven Districts for the election of members of the General Assembly, that each legislative district elect one Senator and three Delegates, that each legislative district may be subdivided into three whole Delegate subdistricts or one whole Delegate subdistrict and one multimember Delegate subdistrict; and that in any legislative district which contains more than two counties or parts of

more than two counties, and where Delegates are to be elected at large by the voters of the entire district, no county, or part of a county, shall have more than one Delegate residing in it; and

It being mandated by § 4 of Article III of the Constitution of Maryland that each legislative district "shall consist of adjoining territory, be compact in form . . . of substantially equal population . . . [and that] [d]ue regard shall be given to natural boundaries and the boundaries of political subdivisions"; and

It being mandated by § 5 of Article III of the Constitution of Maryland that the Governor of Maryland, prior to submitting his legislative districting plan to the General Assembly, shall conduct public hearings; and

It also being provided by § 5 of Article III of the Constitution of Maryland that the Court of Appeals, upon petition of any registered voter in this State, is vested with original jurisdiction "to review the legislative districting of the State and . . . [to] grant appropriate relief, if it finds that the districting of the State is not consistent with requirements of either the Constitution of the United States of America, or the Constitution of Maryland"; and

The petitioners in these cases, all registered voters of the State, having challenged the constitutionality of the Governor's Plan, by collectively asserting, in designated particulars, that (a) certain of the Districts were not compact in form; (b) that due regard was not given to certain natural boundaries and to the boundaries of designated political subdivisions; (c) that the Governor's Plan constituted a deprivation of the equal protection of the laws in violation of the Fourteenth Amendment to the federal constitution; and (d) that the Governor's Plan was invalid for failure to comply with the requirement of § 5 that "public hearings" be held prior to preparation of the Plan and submission to the General Assembly; and

The Court having concluded, by Order dated July 31, 1973, that the Governor's Plan was not validly promulgated and

adopted for lack of compliance with the requirement of § 5 of Article III of the Constitution of Maryland that "public hearings" be held prior to preparation of the Governor's legislative districting plan; and

The Governor's Plan having thus been invalidated and the Court by its Order of July 31, 1973, having determined to exercise its constitutional authority under § 5 to "grant appropriate relief" in these proceedings; and

The Court, by its Order of July 31, 1973, having adopted the Governor's Plan as the plan setting forth the proposed boundaries of the legislative districts for the election of members of the Senate and House of Delegates, subject to cause to the contrary being shown as provided in said Order; and

The Court having directed that public hearings be held before a Special Master to permit members of the general public to provide pertinent and relevant information in these proceedings; and

The Court having further directed that any registered voter of this State, in addition to the petitioners in these proceedings, who desired to show cause why the Governor's Plan, or any part thereof, should not be duly adopted as the final legislative districting plan, should formally intervene and present his objections to the Plan on or before September 30, 1973; and

Public hearings having been conducted by the Special Master on September 10, 1973, and October 17, 1973, and additional parties having formally intervened in the proceedings prior to September 30, 1973; and

The Special Master having reviewed the Governor's Plan in the context of the complaints filed against it, together with the pleadings, the arguments of counsel on various motions for summary judgments, the stipulations, the answers to requests for admissions, and the information and data provided by those at the hearings of September 10 and October 17, 1973; and

The Special Master having filed a "Tentative Report and Preliminary Recommendations" with the Court on Decem-

ber 4, 1973, setting forth his views with respect to the law governing the proceedings, the limited role to be exercised by the Court of Appeals in reviewing complaints of unconstitutionality of the Governor's Plan, and his tentative recommendations for the redistricting of the legislative districts challenged by the petitioners on constitutional grounds; and

The Special Master having thereafter invited exceptions to his tentative and preliminary recommendations and having held a hearing in connection therewith on December 19, 1973, and having heard arguments on said date by counsel for the petitioners in these cases; and

The Special Master having thereafter invited views of any registered voter of the State who desired to present information or data in support of, or in opposition to, the legislative districting set forth in the Governor's Plan, and in the tentative plan submitted by the Special Master, such information and data to be submitted in writing to the Special Master on or before January 4, 1974; and

The Special Master having considered all such information and data, together with the exceptions taken to his tentative recommendations, and arguments of counsel, and having filed a Final Report with the Court on January 24, 1974, setting forth his recommendations for a final legislative districting plan; and

The Court, by Order dated January 25, 1974, having directed all parties in the proceedings, and *amici curiae* appearing in the cases, to present reasons in support of, or opposition to, the adoption by the Court of the final legislative districting plan submitted by the Special Master, and having ordered oral arguments to be held before it on March 5 and 6, 1974; and

Counsel representing the petitioners in these cases and *amici curiae* having filed briefs with the Court and having presented oral argument in support of their respective positions, the Attorney General of Maryland having filed briefs and presented oral argument in support of the legislative districts set forth in the Governor's Plan, the Court having

considered all such briefs and arguments and the Special Master's Tentative Findings and Recommendations and his Final Report, and the Court having concluded that incorporated municipalities are political subdivisions within the contemplation of § 4 of Article III of the Constitution of Maryland, hereby promulgates and adopts the following legislative districting plan for this State:

GENERAL PROVISIONS

(A) The State of Maryland is divided into forty-seven Districts for the election of members of the General Assembly of Maryland.

(B) Each legislative district shall elect one Senator and three Delegates.

(C) Each legislative district may be subdivided into three whole Delegate subdistricts or one whole Delegate subdistrict and one multi-member Delegate subdistrict.

(D) In any legislative district which contains more than two counties or parts of more than two counties, and where Delegates are to be elected at large by the voters of the entire district, no county, or part of a county, shall have more than one Delegate residing in it.

(E) The descriptions of the legislative districts set forth herein, including all references to election districts, wards, precincts, streets, highways and other designations, are to the geographical boundaries thereof as they existed on March 15, 1974.

COMPOSITION OF LEGISLATIVE DISTRICTS

The composition of the forty-seven legislative districts shall be as follows:

* * * * * *

(II) Legislative District 35 shall consist of the following areas: All of Caroline County, Talbot County, and Dorchester County; and Election Districts 1, 2, 3, 10, 11, 12, and 15 of Wicomico County. Legislative District 35 shall elect three Delegates at large.

(JJ) Legislative District 36 shall consist of the following areas: All of Somerset County and Worcester County; Election Districts 4, 5, 6, 7, 8, 9, 13, 14, and 16 of Wicomico County. Legislative District 36 shall elect three Delegates at large.

* * * * * *

AGE, CITIZENSHIP AND RESIDENCE REQUIREMENTS

Pursuant to the authority vested in the Court to "grant appropriate relief" by § 5 of Article III of the Constitution of Maryland, the provisions of § 9 of Article III of the Constitution of Maryland shall govern the age, citizenship and residency requirements for election of Senators and Delegates to the General Assembly of Maryland except that for the primary and general elections of 1974, only, any person seeking election as a Senator or Delegate must be a resident of the District or Subdistrict which he seeks to represent not later than June 1, 1974.

All motions filed in these proceedings, not heretofore acted upon and resolved, are hereby denied.

/s/ ROBERT C. MURPHY,
Chief Judge,

/s/ FREDERICK J. SINGLEY, JR.,

/s/ MARVIN H. SMITH,

/s/ J. DUDLEY DIGGES,

/s/ IRVING A. LEVINE,

/s/ CHARLES E. ORTH, JR.,

/s/ JAMES C. MORTON, JR.,
Judges.

(Seal)

Adopted: March 15, 1974

Filed: March 22, 1974

JAMES H. NORRIS, JR.,
Clerk, Court of Appeals of Maryland.

APPENDIX B

COURT OF APPEALS OF MARYLAND

April 30, 1974

Victor H. Laws, Esq.
Attorney at Law
124 E. Main Street
Salisbury, Maryland 21801

Re: Norris B. Twilley et al. v. Governor of Maryland
Misc. Docket No. 11, September Term, 1973

Dear Mr. Laws:

The Court has considered the motion for reargument, and stay filed on April 15 in the above entitled matter and has denied said motion on April 29, 1974.

Very truly yours,

JAMES H. NORRIS, JR.,
Clerk.

JHNjr/h
cc: Office of Attorney General
Attn: K. Donald Proctor, Esq.
Asst. Attorney General.

APPENDIX C

United States Constitution:

[AMENDMENT XIV]

Section 1.

[*Citizenship Rights Not to Be Abridged by States*]

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Declaration of Rights, Md. Constitution:

Article 2. Constitution, laws and treaties of United States to be supreme law of State.

The Constitution of the United States, and the Laws made, or which shall be made, in pursuance thereof, and all Treaties made, or which shall be made, under the authority of the United States, are, and shall be the Supreme Law of the State; and the Judges of this State, and all the People of this State, are, and shall be bound thereby; anything in the Constitution or Law of this State to the contrary notwithstanding.

Article 7. Elections to be free and frequent; right of suffrage.

That the right of the People to participate in the Legislature is the best security of liberty and the foundation of all free Government; for this purpose, elections ought to be free and frequent; and every citizen having the qualifications prescribed by the Constitution, ought to have the right of suffrage.

Article 23. Due process.

That no man ought to be taken or imprisoned or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or, in any manner, destroyed, or deprived of his life, liberty or property, but by the judgment of his peers, or by the Law of the land.

Article III, Md. Constitution:

Section 4. Requirements for districts.

Each legislative district shall consist of adjoining territory, be compact in form, and of substantially equal

population. Due regard shall be given to natural boundaries and the boundaries of political subdivisions.

Section 5. Legislative districting and apportionment following each decennial census.

Following each decennial census of the United States and after public hearings, the Governor shall prepare a plan setting forth the boundaries of the legislative districts for electing of the members of the Senate and the House of Delegates.

The Governor shall present the plan to the president of the Senate and Speaker of the House of Delegates who shall introduce the Governor's plan as a joint resolution to the General Assembly, not later than the first day of its regular session in the third year following the 1970 census, and in the second year following every census thereafter, and the Governor may call a special session for the presentation of his plan prior to the regular session. The plan shall conform to Sections 2, 3 and 4 of this Article. Following each decennial census the General Assembly may by joint resolution adopt a plan setting forth the boundaries of the legislative districts for the election of members of the Senate and the House of Delegates, which plan shall conform to Sections 2, 3 and 4 of this Article. If a plan has been adopted by the General Assembly by the 45th day after the opening of the regular session of the General Assembly in the third year following the 1970 census and in the second year following every census thereafter, the plan adopted by the General Assembly shall become law. If no plan has been adopted by the General Assembly for these purposes by the 45th day after the opening of the regular session of the General Assembly in the third year following the 1970 census and in the second year following every census thereafter, the Governor's plan presented to the General Assembly shall become law.

Upon petition of any registered voter, the Court of Appeals shall have original jurisdiction to review the legislative districting of the State and may grant appropriate relief, if it finds that the districting of the State

is not consistent with requirements of either the Constitution of the United States of America, or the Constitution of Maryland.

Article 40, "General Assembly", Md. Code Annotated:

LEGISLATIVE DISTRICTING PLAN OF 1973

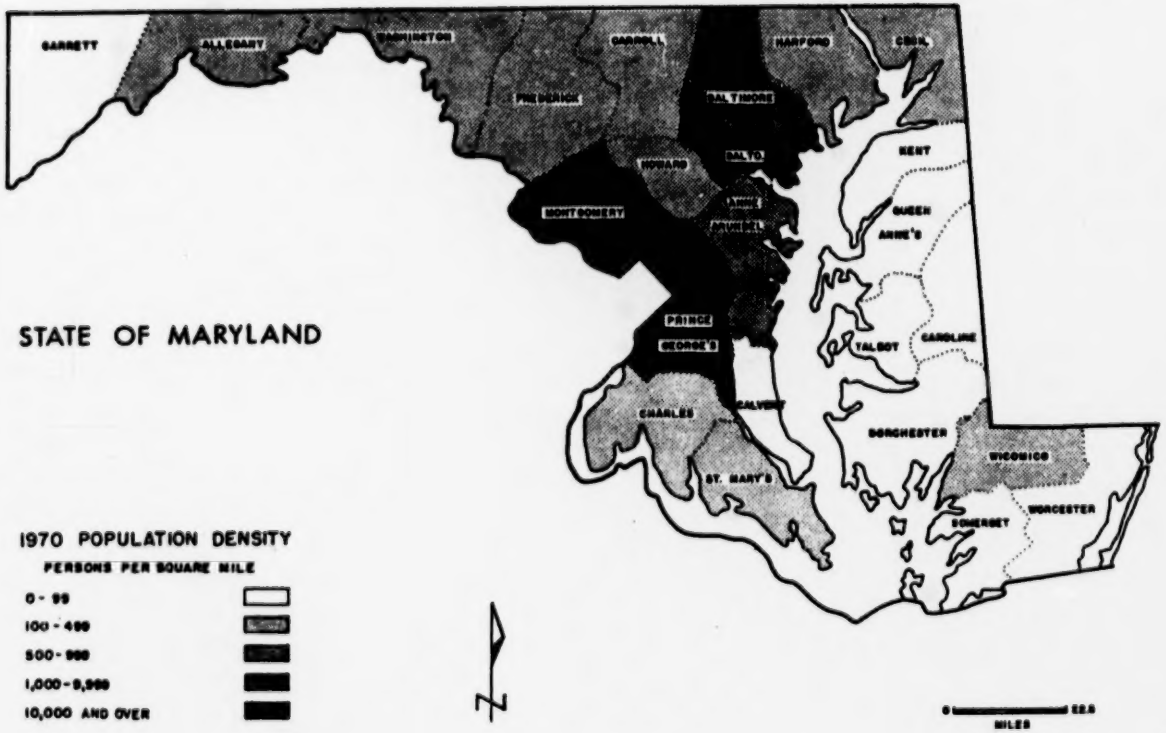
§ 46. General provisions.

(a) *Number of districts.* — The State of Maryland is divided into forty-seven districts for the election of members of the General Assembly of Maryland.

(b) *Number of Senators and Delegates from each district.* — Each legislative district shall elect one Senator and three Delegates.

(c) *Subdivision of districts.* — Each legislative district may be subdivided into three whole Delegate subdistricts or one whole Delegate subdistrict and one multimember Delegate subdistrict.

(d) *Residence of Delegates in districts containing more than two counties.* — In any legislative district which contains more than two counties or parts of more than two counties, and where Delegates are to be elected at large by the voters of the entire district, no county, or part of a county, shall have more than one Delegate residing in it.


STATE OF MARYLAND
GARRETT
ALLEGANY
WASHINGTON
FREDERICK
CARROLL
HARFORD
CECIL
BALTIMORE
BALTO.
HOWARD
MONTGOMERY
KENT
QUEEN ANNE'S
TALBOT
CAROLINE
PRINCE GEORGE'S
CHARLES
CALVERT
DORCHESTER
WICOMICO
ST. MARY'S
SOMERSET
WORCESTER
1970 POPULATION DENSITY
PERSONS PER SQUARE MILE
0 - 99
100 - 499
500 - 999
1,000 - 9,999
10,000 AND OVER
N
MILES

APPENDIX D

APPENDIX E

N
WICOMICO
COUNTY
1970 POPULATION DENSITY
PERSONS PER SQUARE MILE
0 - 99
100 - 499
500 - 999
1,000 - 9,999
10,000 AND OVER
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APPENDIX F

In The Court Of Appeals Of Maryland

In The Matter Of The Legislative Districting Of The State

To the Honorable, Chief Judge Murphy and the

Associate Judges of the Court of Appeals of Maryland:

There is hereby presented a tentative report and preliminary recommendations of the Special Master:

The Constitution of Maryland, Article III, Section 5, requires the adoption of a plan "setting forth the boundaries of the legislative districts for the election of members of the Senate and the House of Delegates" after each decennial census of the United States, and sets forth the mechanics for the establishment of the required plan. Any such plan, says Section 5 of Article III "shall conform to Sections 2, 3 and 4 of this Article." In the attacks on the Governor's Plan currently under consideration by the Court, no question has been raised as to or is presented by Sections 2 and 3. Section 4 provides that:

> "Each legislative district shall consist of adjoining territory, be compact in form and of substantially equal population. Due regard shall be given to natural boundaries and the boundaries of political subdivisions."

Section 5 of Article III provides that after a plan is adopted, it may be challenged in this manner: "Upon petition of any registered voter, the Court of Appeals shall have original jurisdiction to review the legislative districting and apportioning of the State and may grant appropriate relief if it finds that the districting and apportioning of the State is not consistent with requirements of either the Constitution of the United States of America or the Constitution of Maryland."

It has become plain to the Special Master that the role of the Court of Appeals in reviewing complaints of a registered voter of unconstitutionality of a plan is narrow and limited. In the first place, the drawing of legislative district lines is essentially a legislative act and is confided in Section 5 of Article III to the legislature and to the Governor who is to act as draftsman for the legislature. It is not contemplated that the Court will draft or adopt a complete legislative plan, just that it is to repair a defective one. Its entry into the political thicket is authorized only to rectify errors of constitutional magnitude under the State or federal constitutions in a plan that has been adopted in the manner prescribed by the Constitution of Maryland.

The Court's jurisdiction is triggered only by a complaint by a registered voter and the help it can give a registered voter who presents a successful constitutional challenge is relief which eliminates the need for his complaint by rectifying the error or errors complained of.

This view seems to have been that of this Court in this case when, in its order of July 31, 1973, which invalidated the Governor's Plan because no public hearing had been held on the Plan before its promulgation, it specified that the Governor's Plan tentatively was to be regarded as valid unless cause to the contrary be shown.

In reviewing the Governor's Plan in the context of the complaints against it by the parties in this cause, I have considered the pleadings, the arguments of counsel on various motions for summary judgment, the stipulations, the answers to requests for admissions and the information and data provided by those at the hearings of September 10 and October 17.

As a result I have reached the following tentative conclusions as to the constitutional invalidity of certain legislative districts and the appropriate relief that might be given by the Court to eliminate those errors of draftsmanship. In so doing I have attempted to be guided by the following rules, directives and precepts which, in my view, constitute the applicable and controlling law.

A. The fundamental and overriding necessity is substantial equality of representation. *Wesberry v. Sanders*, 376 U.S. 1; *Reynolds v. Sims*, 377 U.S. 533; Constitution of Maryland, Article III, Sec. 4.

B. In State legislative districting the requirement of substantial equality of representation may be gratified constitutionally although there are substantially fewer or substantially more people in one district than there are in one or more other districts provided the variations are end products of a combination of a bona fide good faith effort to achieve equality and (1) a similar effort, made pursuant to a rational State policy (which need not mount up to governmental necessity) to give due regard to natural boundaries and the boundaries of political subdivisions and (2) to achieve compactness of districts. *Reynolds v. Sims, supra; see, Mahan v. Howell*, 404 U.S. 1201, 30 L. Ed. 2d 320, (which approved a Virginia districting plan under which one district was overrepresented by 6.8% and another underrepresented by 9.6%, a variance of 16.4%. The population ratio between the two districts was 1.18 to 1. The average variation was 3.89%).

C. The mandate of the Maryland Constitution that "due regard shall be given to natural boundaries * * *" need not be given only a limited and literal application as meaning a river, a mountain or an expressway. It is entirely conceivable that there could be recognizable historic — or even long established — lines or boundaries to which it would be natural to give due regard. *Reynolds v. Sims, supra*, at pp. 878-789 of 377 U.S. Also, this concept could embrace social and economic interests common to the population of an area. In appropriate circumstances an existing or immediately potential community of interest could be considered in determining whether an area should be included within or excluded from a proposed district in order that all of the citizens of the district be represented reasonably, fairly and effectively. Examples include interests common to an urban area, a rural area, an industrial area or an agricultural area and those common to areas in which people share similar living standards, use the same transportation facilities, have

similar work opportunities or have access to the same media of communication relevant to the election process.

D. In determining whether due consideration was given to natural boundaries and the boundaries of political subdivisions, the standard to be used is not the strict standard of *Kirkpatrick v. Preisler*, 394 U.S. 526, which the lower court in *Mahan* and Governor Mandel apparently and wrongly thought was carried over to State legislative districting by *Reynolds v. Sims* but more flexible and liberal standards, as *Reynolds v. Sims*, perceptively read and *Mahan* make clear. In *Mahan* the lower federal Court had struck down a plan in which the variables were (said both the lower Court and the Supreme Court), "traceable to the desire of the General Assembly [of Virginia] to maintain the integrity of traditional county and city boundaries" (it having been impossible to draft such a plan that would overcome constitutional disparities and still maintain such integrity). The Supreme Court reversed, holding that strict congressional district standards need not apply to State legislative districting because a State is free, as a matter of federal law, to consider the mandates of its constitution more liberally in the case of legislative redistricting than in congressional redistricting. The constitutional standard in State legislative redistricting is the more flexible substantial equality standard of the equal protection clause, as was held in *Reynolds v. Sims*. The law of that case, affirmed and reiterated in greater detail in *Mahan v. Howell*, was the law when the Governor's Plan was prepared and adopted and is the law now. The standards of that law control in deciding as a matter of State policy whether due consideration of existing natural or subdivision boundaries was given by the Governor and is to be considered by the Court in rectifying the errors complained of in the Governor's Plan.

The Supreme Court reversed in *Mahan* largely because the lower court — unlike the General Assembly of Virginia — had not realized the breadth of *Reynolds v. Sims* and the extent of the deviation it indicated would be permissible in State legislative districting. It is fair to say that the Governor erred as to certain districts in the same way and to the same extent as the lower court in *Mahan*, and thus was

prompted or induced in approving various districts (drawn by local legislators) unnecessarily to disregard natural and political boundaries.

E. Whether a given district is or is not compact often can be determined to some extent at least by perceptive observation of its size, its shape, and the configuration of its boundary lines, as well as by the results it produces. As the Supreme Court said in *Reynolds v. Sims* at pp. 578-579 of 377 U.S.:

> "A State may legitimately desire . . . to provide for compact districts of contiguous territory in designing a legitimate apportionment scheme . . . indiscriminate districting, without any regard for political subdivisions or natural or historic boundary lines, may be little more than an open invitation to gerrymandering."

For discussions of how most Courts have tested and decided compactness, both before and since *Baker v. Carr*, see, for examples, *State, ex rel. Barnett v. Hitchcock*, (Mo.), 146 S.W. 40 (1912); *Preisler v. Doherty*, (Mo.), 284 S.W.2d 427 (1955); *Schneider v. Rockefeller*, 41 N.Y.2d 339, where the Court found compactness but reviewed with approval the earlier New York cases in which non-compactness had been found; *Opinion to the Governor*, 221 A.2d 799 (R.P.I. 1966 Dixon, *Democratic Representation* (1970)).

The Court in Pennsylvania held that because often there must be some unavoidable apparent non-compactness, there must be mathematical showings of non-compactness to support a finding of unconstitutionality. See, *Commonwealth ex rel. Spector v. Levin*, 293 A.2d 15 (Pa. June, 1972).

One mathematical test is that suggested by Professor Reock (See, Reock, *Measuring Compactness As A Requirement of Legislative Apportionment*, 5 Midwest Journal of Political Science, 70 (1961)). This test measures the relationship between the area of the district and the area of the smallest possible circumscribing circle, a circle being the most compact possible geometric shape. It is suggested that where the district area includes less than 40% of the smallest

possible circumscribing circle, the district is non-compact. See, Edwards, *The Gerrymander And The One Man Vote*, 46 N.Y.U.L. Rev. 879, 894 (1971).

A second test consists of comparing the ratio of the perimeter of the district with the perimeter of a circle of equal area, the perimeter of the district being measured by drawing lines between "Tri-Junctions" at the points where the constituent precincts intersect the perimeter of the district. See, Schwartzberg, *Re-Apportionment Gerrymanders and the Notion of Compactness*, 15 Minn. L. Rev. 443 (1966). Professor Schwartzberg suggests that where the ratio of compactness exceeds 1.67 to 1, the district should be deemed non-compact.

Having conscientiously and dutifully tried to observe constantly all of the aforegoing precepts, rules and guides in my efforts to gauge the validity of the Governor's Plan and to suggest appropriate relief where I was required to find invalidity, I have reached the following findings and recommendations which I hereby submit for the consideration of the Court:

1. In each instance the districts recommended are substantially equal in population and any deviation from the ideal size is far less than the deviation accepted by the Supreme Court in *Mahan*.

* * * * * *

3. Two districts of the Governor's Plan for the lower Eastern Shore are under attack, Districts 35 and 36. In *Dize, Simpkins and Kent*, Misc. No. 8, it is claimed that the assigning of five election districts and a part of a sixth of Somerset County to Legislative District 35 while assigning the rest of Somerset County to District 36, is constitutionally invalid. District 35 as the Governor's Plan proposed it, consists of the small part of Somerset County to all of Caroline, Talbot and Dorchester Counties and five election districts of Western Wicomico County, along the Nanticoke River. District 36 consists of the rest of Somerset County, Worcester County and all of Wicomico, except the Nanticoke River election districts.

The petitioners in Misc. No. 11 urge that failure to give due regard to a natural boundary, the Nanticoke River, and a political boundary, the Wicomico County line, make the assigning of the five Wicomico election districts to Legislative District 35 constitutionally impermissible. I agree and I also agree with the petitioners in Misc. No. 8 that failure to give due regard to the political boundary of Somerset County (which in a sense is also an historic and natural boundary) renders the placing of the Somerset County election districts of Somerset County in Legislative District 36 constitutionally invalid.

My recommendations are as follows: redraw Legislative District 36 to include all of Worcester and Somerset Counties and all of Wicomico County except election Districts 11 and 15 which are to be assigned to Legislative District 35 so as to release the population bulge that occurs when District 36 absorbs all of Somerset County and the Nanticoke River election districts come back into Wicomico.

There is an alternate possibility. District 36* could include all of Somerset, Dorchester and Talbot Counties and all of Caroline County except election District 1, which would be assigned to Legislative District 34.

* * * * * *

The districts referred to and dealt with in Parts 1 through 4 above are the only parts of the Governor's Plan as to which complaints have been made by the parties herein that I found I was compelled to deal with. I find no constitutional infirmity in any other district.

Respectfully submitted,

/s/ HALL HAMMOND,
Special Master.

Fd. 12/4/73

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* Note: This reference to 36 is an obvious and unintentional error; *35* clearly was intended.

APPENDIX G

In The Court Of Appeals Of Maryland

In The Matter Of The Legislative Districting Of The State

To the Honorable, Chief Judge Murphy and the Associate Judges of the Court of Appeals of Maryland

FINAL REPORT OF THE SPECIAL MASTER

On December 17 last, several weeks after the Tentative Report of the Special Master was filed and circulated, I held a hearing in the Courtroom of the Court of Appeals at which various of the parties in the case presented their views on the recommendations of the Tentative Report. Present also were a number of Maryland legislators and a number of other interested registered voters of the State. Those who had not availed themselves of the opportunity given by the Court to intervene as parties were treated as friends of the Court — that is, they were not permitted to speak or argue but were invited to submit their complaints, suggestions, recommendations, changes and proposed alternate plans in writing not later than January 4, 1974. A number did submit writings ranging in form from casual letters to reasoned and detailed plans for redistricting with full supporting data, including maps. There were also presented several rebuttal arguments against plans which had been proposed by friends of the Court.

I have given full consideration to the arguments of the parties and to all the writings submitted to me, weighing them on the scales of, and evaluating them by the standards of, the constitutional requirements and tests set out and discussed in the Tentative Report, and have reached the conclusions which I now present to the Court for its consideration.

Article III, Section 5 of the Constitution of Maryland provides that the Court of Appeals in the exercise of original jurisdiction may on the petition of any registered voters "grant appropriate relief, if it finds that the districting of

the State is not consistent with the requirement of either the Constitution of the United States or the Constitution of Maryland." I find that the relief which would be appropriate in this case (and which should dispose of all motions, claims and contentions of all the parties) would be the passage by the Court of a decree or order which would approve, ratify and confirm and adopt the Legislative Districts of the State established and promulgated by the Governor's Plan with the exceptions of those Districts enumerated below, each of which would be drawn, delineated and established by the decree or order of the Court as respectively specified below descriptively (maps and composition and population data for each District will accompany this report):

* * * * * *

5. Districts 34, 35 and 36. (Caroline, Talbot, Dorchester, Wicomico, Worcester and Somerset Counties). The middle and lower Eastern Shore is a difficult territory to district because of the smallness of the total population and the fact that much of it is relatively sparsely settled, as well as the fact that rivers and bays frequently divide the land and become its boundaries. It is impossible to draw ideal or anywhere near ideal districts and preserve county lines. The arrangement which I find to most nearly approach the ideal, taking into account all constitutional requirements and standards of equality of population, compactness (which is one thing in heavily populated suburban areas and another in relatively thinly populated areas), contiguity and due regard for political and natural boundaries (which often are based on or reflect a community of economic or social interest and so a largely common point of view), is the following: District 36 shall consist of all of Worcester County and all of Wicomico County, and shall be subdivided into two subdistricts. Subdistrict 36A shall elect one delegate and consist of election district 14 of Wicomico County and all of Worcester County. Subdistrict 36B shall elect two delegates and consist of the remaining election districts in Wicomico County. District 35 shall consist of Somerset, Dorchester and Talbot Counties and all of Caroline County except election district 1. Election district 1 shall become part of District 34.

Finally, the order or decree of the Court must set a one-shot residence requirement that will be realistic and practicable in relation to shortness of time between the effective date of the districting established by the Court and the next election.

Respectfully submitted,

/s/ HALL HAMMOND,
Special Master.

Filed: Jan. 24, 1974.

Note: This was part of Judge Hammond's Final Report 1/24/74.

ALTERNATIVE V

Legislative District	*County*	*Election District*		*Population*
34	Cecil	All		53,291
	Kent	All		16,146
	Queen Anne	All		18,422
	Caroline	1		1,887
			Total	89,746
			Deviation	+6301
			% *Deviation*	+ 7.55
35	Caroline	2, 3, 4, 5, 6, 7, 8		17,894
	Talbot	All		23,682
	Dorchester	All		29,405
	Somerset	All		18,924
			Total	89,905
			Deviation	+6460
			% *Deviation*	+ 7.74
36	Worcester	All		24,442
	Wicomico	All		54,236
			Total	78,678
			Deviation	–4767
			% *Deviation*	–5.712

N.B. LEGISLATIVE DISTRICT 36 shall be subdivided into two subdistricts. Subdistrict 36A shall elect one delegate and consist of Election District 14 of Wicomico County and all of Worcester County. Subdistrict 36B shall elect two delegates and shall consist of the Election Districts 1-13, 15 of Wicomico County.

APPENDIX H

In The Court Of Appeals Of Maryland

Miscellaneous Petition
No. 11

September Term, 1973

In The Matter Of The Legislative Redistricting Of The State

Petition of Norris B. Twilley, Edgar T. Bennett, W. Blan Harcum, Hollis R. Bennett, Irvin G. Catlin, Milton J. Smiley and Francis X. Dorr, Registered Voters of the State of Maryland to Review the Legislative Districting of the State

PETITION OF REGISTERED VOTERS TO INTERVENE IN PROCEEDINGS TO REVIEW THE LEGISLATIVE DISTRICTING OF THE STATE OF MARYLAND

Now come Norris B. Twilley, Edgar T. Bennett, W. Blan Harcum, Hollis R. Bennett, Irvin G. Catlin, Milton J. Smiley and Francis X. Dorr, by their attorneys K. King Burnett and Webb, Burnett & Simpson, and file herewith their Petition to Intervene in pending proceedings before this Honorable Court to review the Legislative Districting of the State of Maryland, and in support thereof say that:

1. Your Petitioners are all registered voters of the Barren Creek (First) Election District of Wicomico County, State of Maryland.

2. Your Petitioners seek to intervene in pending proceedings before this Honorable Court pursuant to the provisions of the Order of this Court dated July 31, 1973, in Miscellaneous Nos. 5 and 6, September Term, 1972; and Miscellaneous Nos. 1, 2, 3 and 4, September Term, 1973, which Order provided, *inter alia*, that:

(a) The Legislative Districting Plan submitted by the Governor to the General Assembly on January 10, 1973, which became law on February 24, 1973, was invalidated, for reasons more fully set forth therein; and

(b) This Court retained jurisdiction in the proceedings to "grant appropriate relief" pursuant to the provisions of Article III, Section 5, of the Constitution of Maryland; and

(c) The aforesaid Plan was adopted by the Court as the plan setting forth the proposed boundaries of the Legislative Districts for the election of members to the Senate and House of Delegates of Maryland, unless cause to the contrary be shown as set forth therein; and

(d) Any registered voter of the State of Maryland who desired to show cause why the said plan, or any part thereof, should not be duly adopted as the final Legislative Districting Plan for the State of Maryland should formally intervene in these proceedings and present his objections to said plan on or before September 30, 1973.

3. Your Petitioners specifically seek review of those portions of the aforesaid Legislative Districting Plan which provide that those portions of Wicomico County comprising Election Districts Nos. 1, 2, 3, 10 and 12 shall be a part of Legislative District No. 35; while those portions of Wicomico County comprising Election Districts Nos. 4, 5, 6, 7, 8, 9, 11, 13, 14, 15 and 16 shall be a part of Legislative District No. 36.

4. Your Petitioners believe, and therefore allege, that the division of Wicomico County into two (2) Legislative Districts as referred to hereinabove deprives them of their rights under the Maryland Constitution, causes your Petitioners immediate, substantial and irreparable injury, and is in vio-

lation of the provisions of the equal protection clause of the 14th Amendment to the United States Constitution and of Article III, Sections 4 and 5 of the Maryland Constitution, in that:

(a) Legislative District No. 35, as presently constituted, is not compact in form insofar as either the Somerset County or Wicomico County portions thereof relate to the balance of said district.

(b) The portion of Wicomico County now apportioned to Legislative District No. 35 does not adjoin territory in the balance of said district.

(c) The apportionment of that portion of Wicomico County now assigned to Legislative District No. 35 does not give due regard to natural boundaries.

(d) The apportionment of that portion of Wicomico County now assigned to Legislative District No. 35 does not give due regard to boundaries of political subdivisions.

(e) The apportionment of that portion of Wicomico County now assigned to Legislative District No. 35 effectively disenfranchises the registered voters therein.

7. Your Petitioners believe, and therefore allege, that there are numerous valid reasons, many of which are peculiar to this case, which fully justify some additional disparities in absolute equality of numbers of residents of districts, among which are, in addition to those previously alleged, the lack of means of communication, lack of economic or social intercourse, historical precedent, lack of common community or civic interest, interest in local legislation, the need for county representation, and others, as to all of which your Petitioners wish to present evidence; your Petitioners further respectfully alleging that it is both the right and duty of this Court, having found the redistricting plan to be invalid, to consider all of such factors before finally adopting its own plan.

8. Your Petitioners believe, and therefore allege, that the Constitutional infirmities referred to in Paragraph 4 may

be cured in a manner consistent with the requirements of the Constitutions of the State of Maryland and the United States by the redistricting of that portion of Wicomico County now apportioned to Legislative District No. 35 into Legislative District No. 36, and in support thereof say that such reapportionment would:

(a) Cause both Legislative Districts Nos. 35 and 36 to be more compact in form than either are under the present plan;

(b) Cause that portion of Wicomico County presently apportioned to Legislative District No. 35 to become part of a District which, as reconstituted, would give greater regard to natural boundaries than does the present plan;

(c) Cause that portion of Wicomico County presently apportioned to Legislative District No. 35 to become a part of a District which, as reconstituted, would give greater regard to boundaries of political subdivisions than does the present plan in that it would permit the County of Wicomico to remain a sole undivided entity with respect to Legislative Districting;

(d) Cause that portion of Wicomico County presently apportioned to Legislative District No. 35 to become part of a district which it adjoins in territory;

(e) Effectively re-enfranchise that portion of Wicomico County presently apportioned to Legislative District No. 35 and to reunite it with those with whom it has its only economic, social and civic ties and its only effective lines of communication.

WHEREFORE, your Petitioners pray that this Honorable Court pass an Order:

1. Permitting your Petitioners to intervene in these proceedings.

2. Permitting your Petitioners to present evidence in support of their Petition at a time and manner to be directed by the Court.

3. Permitting your Petitioners to be heard on formal oral argument on the merits of their Petition.

4. Granting the relief sought herein.

Respectfully submitted,

/s/ K. KING BURNETT
WEBB, BURNETT & SIMPSON

Filed: 9-27-73

APPENDIX I

In The Court Of Appeals Of Maryland

September Term, 1973

Miscellaneous No. 11

Norris B. Twilley, et al.,
Petitioners,

v.

Governor of Maryland, et al.,
Respondents.

ANSWER

Respondent, Marvin Mandel, Governor of Maryland, by his attorneys, Francis B. Burch, Attorney General, Henry R. Lord, Deputy Attorney General, George A. Nilson and K. Donald Proctor, Assistant Attorneys General, answers the Petition to Review Legislative Districting of the State filed herein, and says:

1. The allegations of Paragraphs 1, 2 and 3 of the Petition are admitted.

2. The allegations of Paragraphs 4, 5, 6, 7 and 8 of the Petition are denied.

3. Further answering said Petition, Respondent states that Legislative Districts Nos. 35 and 36 as constituted by the Governor's Plan comply with the Federal Constitutional requirements presently applicable and applicable at the time said Plan was submitted to the General Assembly of Maryland, and the Maryland Constitutional requirements that said districts consist of adjoining territory, be compact in form, be of substantially equal population, and give due regard to natural boundaries and the boundaries of political subdivisions.

WHEREFORE, Respondent prays that the Court find that the legislative districting of the State as challenged herein is consistent with the requirements of the Constitution of the United States and the Constitution of Maryland and that the Court dismiss the Petition filed herein.

/s/ FRANCIS B. BURCH,
Attorney General,

/s/ HENRY R. LORD,
Deputy Attorney General,

/s/ GEORGE A. NILSON,
Assistant Attorney General,

/s/ K. DONALD PROCTOR,
Assistant Attorney General,
Attorneys for Respondent.

Filed: 10-9-73.

APPENDIX J

In The Court Of Appeals Of Maryland

September Term, 1973

Miscellaneous No. 11

Norris B. Twilley, et al.,

Petitioners,

v.

Governor of Maryland, et al.,

Respondents.

MEMORANDUM CONCERNING TENTATIVE REPORT AND PRELIMINARY RECOMMENDATIONS OF SPECIAL MASTER

I. *Corrections to Special Master's Tentative Report.*

We respectfully suggest that the following two corrections be made in the report:

A. In "Alternative V" attached to the report the population figure for Worcester County should be 24,442 rather than 23,733. This will change the Total of Wicomico and Worcester to 78,678, the deviation to 4777 and the percentage deviation to –5.72. For ease of reference attached is a copy of a sheet with these corrected figures, marked "Corrected Alternative V".

B. In the first full paragraph on page 11 of the report, the text is inconsistent with the attached "Burnett Alternative IV" and the accompanying map. That alternative envisaged the Nanticoke River Election Districts, plus Wicomico Election Districts 11 and 15 being assigned to Legislative District 35 and all of Somerset to Legislative District 36, as is shown on the above-

referred-to attachments. A redrafted text of this paragraph is enclosed.

In the first line of the second full paragraph on page 11, the reference to District 36 should be to District 35.

II. *Changes of Substance Suggested to Special Master's Tentative Report.*

We are most appreciative of the recognition by the Special Master of the unconstitutional effects of the Governor's Plan upon the Petitioners in this case.

We propose that the sole recommendation in the final report as relates to Districts 34-36 be the Alternative V proposed in the tentative draft report, with possibly a small change — that Caroline County be left intact in District 35. For ease of reference, attached as "Substitute Alternative V" are the population and deviation figures applicable to this proposal.

We also propose that the new 36th District of Wicomico and Worcester counties in Alternative V elect at least one delegate from Worcester County. This can be accomplished by dividing the 36th District so Worcester is a Delegate district entitled to one delegate and Wicomico a Delegate district with two delegates. Alternatively, a provision could be added requiring that at least one delegate be from each county with all three running at large in both counties.

We submit that this proposal is the best possible plan for the following principal reasons:

1. *It is the only possible plan that would keep intact all county boundaries on the Eastern Shore.* This goal is particularly important in this area of the State where county lines have even more importance than in other areas of the State. The nine Eastern Shore counties represent over one-third of the area of the State, but have only 6½% of the population. Since only two of the nine counties have home rule (Talbot and Wicomico) they depend on their representatives to the General Assembly more than any other area. Unlike the more metropolitan areas of the State, the orientation of each county, economically, socially and in a civic

sense, is toward towns and communities within that county. Weekly newspapers exist within each of these counties, the circulation of each of which is generally limited to that one county.

2. *Within the guidelines of Mahan*[1] *this is the only proposal which permits the 5918 persons in Wicomico County living in the so-called Nanticoke River Election Districts to be reunited with Wicomico County with whom they exclusively share economic, social and community interests.* Indeed, the unconstitutional disregard of the Nanticoke River, the natural boundary and the Wicomico County line, can be cured only by the Special Master's Alternative V or the substitute therefor proposed herein.

Alternative IV actually does not solve the finding of unconstitutionality, it only adds two more districts in Wicomico to those already disenfranchised. Its only merit, and the only reason it was suggested at all, is because it *might* provide a somewhat louder voice for the few Wicomico Countians in District 35.

We are the only party to the proceedings to produce substantial evidence as to the overwhelming community of interest common to the parties herein and the rest of their county. As outlined at the hearing through three witnesses, the Nanticoke River (which is also the county line) is a formidable historic and natural line which continues to force virtually *all* economic, social and cultural ties of those on its southern bank to be with Wicomico County; that each Nanticoke Election District's transportation by road is to

---

[1] The maximum deviations in Mahan were +6.8% and –9.6% for a maximum deviation of 16.4%. Under Substitute Alternative V the maximum deviation would be 16.57%. The largest would be District 35 at +9.99% and the smallest District 31 (Touhey Plan) at –6.58. The one precinct in Caroline County placed in District 34 as proposed in the tentative report would cause the maximum deviation in the State to fall below 16.4%, but the average variation would be either exactly the same or almost so. It is hard to conceive how such a minor adjustment, made to follow county lines, would invalidate the plan. If however the Special Master feels to the contrary, then we urge that the Special Master's Alternative V become the only, or, in the alternative, the preferred proposal.

Salisbury rather than even with each other; that its sole access to the communication media is to that of Wicomico County, among other points made.

* * * * * *

4. *The proposed solution more fairly allocates delegates as between counties and avoids possible claims of unconstitutionality in either the present delegate selection system or under Alternative IV.*

Under the Governor's Plan, District 36 includes all of Worcester County (24,442), part of Wicomico (48,318) and part of Somerset (14,285). Subsection D of Section 46 in Joint Resolutions 1 and 2, in providing that no county can have more than one resident delegate when a district has more than two counties or parts thereof has the effect of guaranteeing the 14,285 Somerset residents a resident delegate, while denying the 48,318 residents of Wicomico more than one — despite their having over three times as much population. The difference would be less glaring under Alternative IV but still on very questionable constitutional ground (Somerset 18,924 vs. Wicomico 44,568). Under Alternative V, however, Worcester County (24,442) would have one delegate and Wicomico (54,236) two.[2]

In the 35th District there would be four counties and three delegates. Because of the above cited provision, no county could have more than one delegate. Somerset can fairly compete for a delegate (its population and that of Caroline are about the same). In any event, Somerset as an entity can make its voice known as a single community of interest.

5. *The proposed Alternative V is constitutional.* The Attorney General in his recently-filed objections to the draft report made the claim that the proposed Alternative V was unconstitutional. We are unable to comprehend how the claim of unconstitutionality can be made as to this plan when the Attorney General is defending the Governor's Plan as constitutional. Alternative V has the constitutional advantage of defending Somerset's county lines and keeping its community of interest intact, whereas the Governor's plan

[2] Worcester has a deviation of –6.30% and Wicomico +3.40%.

will split the county. There is no distinction between the proposed plan and the Governor's Plan as concerns the argument of "adjoining territory". Somerset and Dorchester clearly do adjoin as their lines meet and coincide for some distance.

* * * * * *

Somerset's objection, we respectfully submit, does not result from any disrespect for these principles — for their entire community is united within its county lines — but from its desire to retain a resident delegate — a "right" nowhere mentioned and to which its population does not entitle it.

/s/ K. KING BURNETT,
Attorney for Petitioners.

Filed: 12-29-73.

CORRECTED ALTERNATIVE V

Legislative District	*County*	*Election District*		*Population*
34	Cecil	All		53,291
	Kent	All		16,146
	Queen Anne	All		18,422
	Caroline	1		1,887
			Total	89,746
			Deviation	+6301
			% *Deviation*	+ 7.55
35	Caroline	2, 3, 4, 5, 6, 7, 8		17,894
	Talbot	All		23,682
	Dorchester	All		29,405
	Somerset	All		18,924
			Total	89,905
			Deviation	+6460
			% *Deviation*	+ 7.74
36	Worcester	All		24,442
	Wicomico	All		54,236
			Total	78,678
			Deviation	–4777
			% *Deviation*	– 5.72

APPENDIX K

In The Court Of Appeals Of Maryland

In The Matter Of Legislative Districting Of The State

MEMORANDUM OF THE ATTORNEY GENERAL REGARDING TENTATIVE REPORT AND PRELIMINARY RECOMMENDATIONS OF THE SPECIAL MASTER

At the conference of counsel held by the Special Master on December 19, 1973, and by this Court's Order of December 4, 1973, registered voters have been granted leave to present information and data regarding the legislative districting set forth in the Governor's Plan and the legislative districting proposed by the Special Master on or before January 4, 1974. While the office of the Attorney General is not equipped or prepared to present alternative proposals for the legislative districting of the State, and indeed it may well not be its role to do so, the Attorney General does believe that it is important that comment be made with regard to certain aspects of the Special Master's proposals.

* * * * * *

Second, while Section 5 of Article III of the Constitution wherein this Court is granted original jurisdiction to review the legislative districting of the State does not by its terms necessarily contemplate an adversary proceeding under the present procedural stature of this case, the basic tenets of our Common Law and Federal and State constitutional systems would appear to clearly mandate such a conclusion. The Attorney General (and the Respondent he represents) is the only party to this proceeding who can present positions which are adverse to the Petitioners herein.

* * * * * *

The thrust of these comments is to suggest to the Special Master that the tests for the determination of the existence of defects of constitutional magnitude in the Governor's Plan are other than those applied by him, and that application of the proper tests necessitates no changes in the Governor's Plan.

It is earnestly submitted that in the last analysis, such deviations as might be said to exist in the Governor's Plan from perfect compactness and from perfect regard for natural boundaries and the boundaries of political subdivisions (without suggesting that "perfection" is by any means required, as will be discussed below), are the result of adherence to what was believed to be the applicable population deviation standard for legislative districts at the time the plan was drafted and submitted to the Legislature. * * *.

* * * * * *

The maintaining of such strict population standards by the Governor was entirely justified under the then existing law. In an opinion filed on December 28, 1972 (two weeks before the Constitution required submission of the Plan to the Legislature) the Court of Appeals of New York stated:

> "[W]e think that the authorities amply support the choice of maximum population equality as a guiding principle in redistricting and reapportioning the State Legislature. Indeed, we are of the opinion that the standards for State legislative and congressional apportionment are substantially the same." *Schneider v. Rockefeller*, 31 N.Y.2d 420, 293 N.E.2d 67, 71 (1972).

In the face of such statements it must be concluded that the more rigid standards *were* the law at the time of the preparation of the Governor's Plan, and that *those* standards must be applied by the Special Master in testing the sufficiency of the Governor's Plan. This is particularly so where to the extent that compactness and conformity to natural boundaries and the boundaries of political subdivisions may have been sacrificed in the districts under attack, such criteria gave way to the overriding constitutional objective of substantial equality of representation.

* * * * * *

Districts 35 and 36 are also tentatively found by the Special Master to be invalid. As he apparently recognizes, however, the deviations from conformity to natural boundaries and the boundaries of political subdivisions which he says exist, result from the application of a more perfect standard of population equality which standard it is submitted is correct and permissible.

It should also be noted that the alternative recommendation of the Special Master for the redrawing of Districts 35 and 36 may be constitutionally defective as not providing for districting of "adjoining territory." As described, District 35 would consist of all of Somerset, Dorchester and Talbot Counties and most of Caroline County. The difficulty with this proposal is that Somerset County would not only be separated from the remainder of District 35 by a large body of water, but also one would be unable to travel from Somerset County to the remainder of District 35 without entering District 36. Compare *Schneider v. Rockefeller*, *supra*, 293 N.E.2d at 72:

> "[T]he requirement of contiguity is not necessarily violated because a part of a district is divided by water. . . . *Moreover, in none of the cited examples is it necessary to travel through to keep within the boundaries of the challenged district.*" (Emphasis supplied.)

* * * * * *

Finally, putting aside the question of whether the law of *Mahan* was the law in effect when the Governor's Plan was prepared, it might be suggested that, in any event, inasmuch as this Court and the Special Master now have this matter before them and it may be in the public interest to give greater recognition to the State policy expressed by the constitutional criteria for compactness and due regard for natural boundaries and the boundaries of political subdivisions. * * *.

* * * * * *

* * * The State's interest, however, in consistency and permanency (within the ten year constitutional framework) in districting plans would seem to clearly outweigh such results, and thus, mandate a rejection of the *Mahan* standards on such a basis.

In conclusion, Article III, Section 4 of the Maryland Constitution in setting forth the criteria to be applied in the districting of the State necessarily incorporates therein a recognition that no one of the criteria can be fully gratified, but rather, that those various criteria must be melded so that all will receive some gratification. The degree of gratification which is to be accorded such criteria is within the discretion of the drafter of the plan, so long as there is no complete departure from any one criteria. See *Priesler v. Doherty*, *supra*, at 284 S.W.2d at 431; *Schneider v. Rockefeller*, *supra*, 293 N.E.2d at 72; *Opinion of the Governor*, 221 A.2d 799, 803 (R.I., 1966). The Governor's Plan certainly satisfies this test under more equal population tests. Even if the broader and more liberal tests are to be applied, it was within the discretion of the drafter's of the Governor's Plan to determine to what degree the overriding principle — substantial equality — would be applied. The Governor's Plan is constitutional in all respects.

Respectfully submitted,

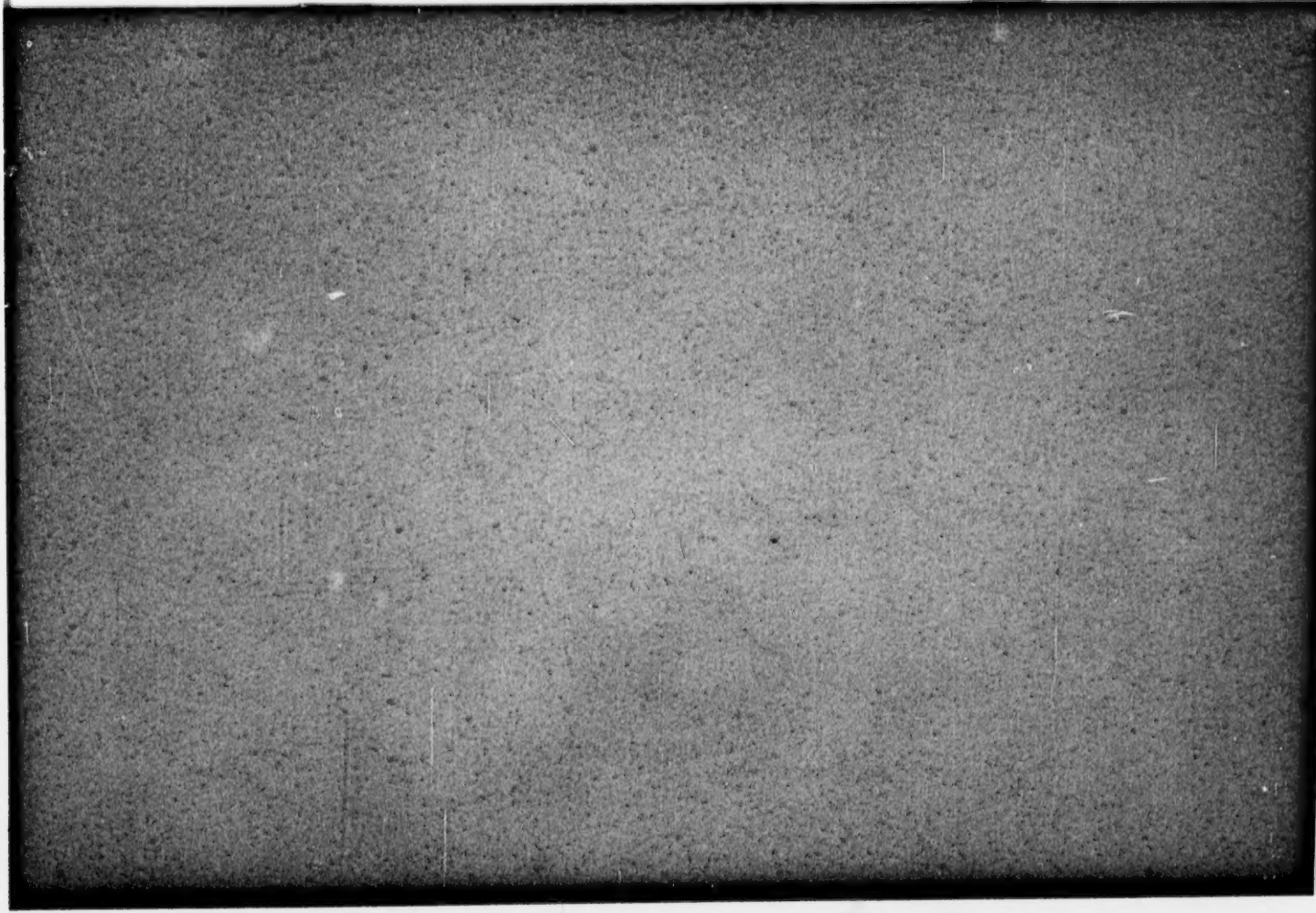
/s/ FRANCIS B. BURCH,
Attorney General,

/s/ HENRY R. LORD,
Deputy Attorney General,

/s/ GEORGE A. NILSON,
Assistant Attorney General,

/s/ K. DONALD PROCTOR,
Assistant Attorney General.

Filed: 1-3-74.



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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1900

NORRIS B. TWILLEY, ET AL.,
Petitioners,

v.

GOVERNOR OF THE STATE OF MARYLAND,
Respondent.

BRIEF OF RESPONDENT IN OPPOSITION

FRANCIS B. BURCH,
Attorney General of Maryland,
HENRY R. LORD,
Deputy Attorney General
of Maryland,
GEORGE A. NILSON,
Assistant Attorney General
of Maryland,
K. DONALD PROCTOR,
Assistant Attorney General
of Maryland,
One South Calvert Building,
Baltimore, Maryland 21202,
For Respondent.

The Daily Record Co., Baltimore, Md. 21202

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GOVERNOR OF THE STATE OF MARYLAND,

Respondent.

BRIEF OF RESPONDENT IN OPPOSITION

OPINION BELOW

The Order of the Court of Appeals of Maryland dated March 22, 1974, is printed in Appendix A of the Petition and is reported at 271 Md. 320. This being an original proceeding in that Court, there are no further opinions or orders.

JURISDICTION

The Order of the Court of Appeals of Maryland was entered on March 22, 1974. Within ninety days thereafter, Petitioners filed with Court a Petition for Writ of Certiorari to the Court of Appeals of Maryland pursuant to 28 U.S.C., §1257 (3).

QUESTIONS PRESENTED

1. Whether the legislative districting plan for State Legislative Districts 35 and 36 adopted by the Court of Appeals of Maryland "disenfranchises" those residents of Wicomico County included in District 35, where substantial equality population exists between all districts in the State?

2. Whether the proviso of the Maryland legislative districting plan that in districts such as District 36 no county shall have more than one delegate residing in it affects equality of representation where that proviso constitutes only a basis of residence of delegates, and is not a basis for voting or representation?

STATUTES INVOLVED

Maryland Constitution, Article III, Sections 1 through 5 are printed in Appendix A of this Brief in Opposition. The Legislative Districting Plan for the State of Maryland as promulgated and adopted by the Court of Appeals of Maryland is printed in Appendix A of the Petition. Section 1 of the Fourteenth Amendment to the Constitution of the United States is printed at pages 7a-8a of Appendix C of the Petition.

STATEMENT OF THE CASE

Petitioners are registered voters in Wicomico County, Maryland who in September, 1973 intervened in an original proceeding in the Court of Appeals of Maryland seeking to have the entirety of their County included within one state legislative district.

The Legislative Districting plan which Petitioners sought to attack had been proposed by the Governor of Maryland pursuant to Article III, Section 5 of the Constitution of Maryland and became law on February 24, 1973. That plan, in accordance with Sections 2, 3 and 4 of Article III of the

Maryland Constitution, divided the State into 47 legislative districts for the election of the members of the General Assembly of Maryland, each such district being of substantially equal population[1] and each such district to contain one Senator and three Delegates. That plan placed 5,918 residents of Wicomico County in one legislative district (District 35) and the remaining 48,318 residents of Wicomico County in another legislative district (District 36).

On July 31, 1973, the Court of Appeals of Maryland, in an original proceeding theretofore instituted before it pursuant to Section 5 of Article III of the Maryland Constitution, invalidated the so-called Governor's Plan finding that notice of "public hearings" called for by Section 5 of Article III was deficient and that the Governor's plan therefore had not been validly promulgated and adopted. The Court, however, further ordered that it was adopting the Governor's Plan as the legislative districting plan for the State "unless cause to the contrary be shown," and provided that registered voters desiring to show such cause to the contrary should formally intervene in the proceedings.

Petitioners thereupon filed their Petition to Intervene with the Court of Appeals alleging that Legislative District 35 as constituted in the Governor's Plan, containing *inter alia* 5,918 residents of Wicomico County, violated the Maryland Constitutional requirements that districts be compact, consist of adjoining territory and give due regard to natural boundaries and the boundaries of political subdivisions. It was further claimed that the inclusion of the 5,918 residents of Wicomico County in District 35 "effectively disenfranchise[d] the registered voters therein," apparently from the remaining 48,318 residents of Wicomico County who had been included in District 36.

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[1] It was never contended below by anyone that the districts of the Governor's Plan were of other than substantially equal population.

Petitioners contended that all of these defects could be cured by a plan proposed by them which placed all of Wicomico County in District 36.

The Court of Appeals rejected both the Governor's Plan and Petitioners' suggested plan, apparently choosing instead to follow the suggestions of intervening voters of Somerset County which had also been "split" by the Governor's plan between Districts 35 and 36 and placed all of Somerset County in District 36.[2]

ARGUMENT

I.

THE LEGISLATIVE DISTRICTING PLAN FOR STATE LEGISLATIVE DISTRICTS 35 AND 36 AS ADOPTED BY THE COURT OF APPEALS OF MARYLAND DOES NOT "DISENFRANCHISE" THOSE RESIDENTS OF WICOMICO COUNTY INCLUDED IN DISTRICT 35.

Petitioners argue that the districting in question is violative of their rights to equal protection of the laws and due process of law. They, however, apparently concede, as well they must, that the Plan of the Court of Appeals of Maryland affords each district substantial equality of population. Indeed, as they also concede (Petition at page 5) the plan for which they contend would produce greater population disparity than the plan adopted by the Court.

Petitioners' reliance on *Mahan v. Howell*, 410 U.S. 315 (1973) is misplaced. There a three-judge District Court ruled the Virginia reapportionment plan unconstitutional because it deviated from population equality in order to establish dis-

[2] The Special Master appointed by the Court had proposed a plan for Districts 35 and 36 which placed *inter alia* all of Somerset County in District 35 and *inter alia* all of Wicomico County in District 36. The Attorney General of Maryland argued that that proposal violated the Maryland Constitutional provision that Districts consist of "adjoining territory." Compare description of District 35 of the "Hammond Plan" at Petition at page 5 with map printed in Appendix D to the Petition at 11a.

tricts conforming to political subdivision boundaries. This Court reversed, holding that the deviations therein involved (approximately 16%) were within tolerable limits where those deviations resulted from the State's rational objective of preserving the integrity of political subdivision lines.

Here, on the other hand, the Court of Appeals of Maryland was not acting to cure federal constitutional defects arising from lack of population equality, such allegations never having been made in this case. Likewise, there is no indication by the Court that it believed that the population deviations in its plan reached the limits of the equal protection clause.

As such, Petitioners argument resolves itself to a claim that the federal Constitution and *Mahan require* (rather than *permit*) that population deviations be stretched to their constitutional limits in order to accomplish subdivision representation. Such a contention, of course, requires no response.

Finally, it is submitted that the Maryland Constitutional requirement that districts consist of "adjoining territory" forms an adequate and independent state ground for the rejection by the Court of Appeals of the Plan argued for by Petitioners. See footnote 2, *supra*.

II.

THE PROVISO OF THE MARYLAND LEGISLATIVE DISTRICTING PLAN THAT IN DISTRICTS SUCH AS DISTRICT 36 NO COUNTY SHALL HAVE MORE THAN ONE DELEGATE RESIDING IN IT IN NO WAY AFFECTS THE EQUALITY OF REPRESENTATION OTHERWISE EMBODIED IN THE PLAN.

Petitioners' argument in this regard proceeds on the entirely fallacious assumption that a Delegate from a multi-county district represents only the residents of his county.

The provision in question is that:

> "In any legislative district which contains more than two counties or parts of more than two counties, *and*

> *where Delegates are to be elected at large by the voters of the entire district*, no county, or part of a county shall have more than one Delegate residing in it." (Emphasis added.)

As applied to District 36 which consists of all of Worcester County, most of the population of Wicomico County, and all of Somerset County, this means that of the three Delegates to be elected from that District, *each of whom is to be elected at large by the voters of the entire district*, one shall reside in each County.[3]

It is thus clear that this Court's language and holding in *Dusch v. Davis*, 387 U.S. 112, 115 (1967), quoting *Fortson v. Dorsey*, 379 U.S. 433, 438 (1965) is directly applicable here:

> "It is not accurate to treat a senator from a multi-district county as the representative of only that district within the county wherein he resides. The statute uses districts in multi-district counties merely as the basis of residence for candidates, not for voting or representation. Each district's senator must be a resident of that district, but since his tenure depends upon the county-wide electorate he must be vigilant to serve the interests of all the people in the county, and not merely those of people in his home district; thus in fact he is the county's and not merely the District's senator."

The sole purpose of the provision in question is to give some assurance that each county in the State will have one of its residents serving as a Delegate in the State Legislature who will be sensitive to matters relating to that County's local legislation.[4]

At the same time, however, in the language of *Dusch v. Davis, supra*, such a Delegate's tenure depends on the district-wide electorate, and he must be vigilant to serve the

---

[3] In addition, the entire District elects one member of the State Senate. See Maryland Constitution, Article III, Section 3.

[4] Ironically, Wicomico County is the only Eastern Shore County with the power to pass its own local legislation.

interests of all the people in the district and not merely those of his home County. Clearly, this represents no "invidious discrimination" and no federal question is presented.[5]

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

FRANCIS B. BURCH,
Attorney General of Maryland,
HENRY R. LORD,
Deputy Attorney General
of Maryland,
GEORGE A. NILSON,
Assistant Attorney General
of Maryland,
K. DONALD PROCTOR,
Assistant Attorney General
of Maryland,
For Respondent.

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[5] It is to be added that the availability of *any* relief to Petitioners at this juncture is at the very least highly questionable, even if it is assumed that a federal question is presented herein (which there clearly is not). Compare *Maryland Citizens for a Representative General Assembly v. Governor of Maryland*, 429 F.2d 606 (4th Cir. 1970) (Opinion by Haynsworth, C.J.). Those candidates seeking nomination as Senators or Delegates in the 1974 General Election were required to file therefor on or before July 1, 1974. See Maryland Annotated Code, Article 33, Sections 4A-1 to 4A-3 (1971 Replacement Volume & 1973 Supp.). The offices sought by such candidates are, of course, defined by the districting which Petitioners seek to bring into issue herein.

APPENDIX A

CONSTITUTION OF MARYLAND, ARTICLE III

Section 1. Legislature to consist of two branches; to be styled General Assembly.

The Legislature shall consist of two distinct branches; a Senate, and a House of Delegates, and shall be styled the General Assembly of Maryland.

Section 2. Membership of Senate and House of Delegates.

The membership of the Senate shall consist of forty-seven (47) Senators. The membership of the House of Delegates shall consist of one hundred forty-one (141) Delegates.

Section 3. Division of State into Legislative districts; number of Senators and Delegates from each district; subdivision of districts.

The State shall be divided by law into legislative districts for the election of members of the Senate and the House of Delegates. Each legislative district shall contain one (1) Senator and three (3) Delegates. Nothing herein shall prohibit the subdivision of any one or more of the legislative districts for the purpose of electing members of the House of Delegates into three (3) single-member delegate districts or one (1) single-member delegate district and one (1) multi-member delegate district.

Section 4. Requirements for districts.

Each legislative district shall consist of adjoining territory, be compact in form, and of substantially equal population. Due regard shall be given to natural boundaries and the boundaries of political subdivisions.

Section 5. Legislative districting and apportionment following each decennial census.

Following each decennial census of the United States and after public hearings, the Governor shall prepare a plan setting forth the boundaries of the legislative districts for electing of the members of the Senate and the House of Delegates.

The Governor shall present the plan to the president of the Senate and Speaker of the House of Delegates who shall introduce the Governor's plan as a joint resolution to the General Assembly, not later than the first day of its regular session in the third year following the 1970 census, and in the second year following every census thereafter, and the Governor may call a special session for the presentation of his plan prior to the regular session. The plan shall conform to Sections 2, 3 and 4 of this Article. Following each decennial census the General Assembly may by joint resolution adopt a plan setting forth the boundaries of the legislative districts for the election of members of the Senate and the House of Delegates, which plan shall conform to Sections 2, 3 and 4 of this Article. If a plan has been adopted by the General Assembly by the 45th day after the opening of the regular session of the General Assembly in the third year following the 1970 census and in the second year following every census thereafter, the plan adopted by the General Assembly shall become law. If no plan has been adopted by the General Assembly for these purposes by the 45th day after the opening of the regular session of the General Assembly in the third year following the 1970 census and in the second year following every census thereafter, the Governor's plan presented to the General Assembly shall become law.

Upon petition of any registered voter, the Court of Appeals shall have original jurisdiction to review the legislative districting of the State and may grant appropriate relief, if it finds that the districting of the State is not consistent with requirements of either the Constitution of the United States of America, or the Constitution of Maryland.

Upon the adoption by the qualified voters of the State in 1972 of the above amendments to Sections 2, 3, 4 and 5 of this Article, any legislative districting and apportionment plan submitted by the Governor or adopted by the General Assembly pursuant to the provisions of this section as they existed immediately prior to the adoption in 1972 of the said amendments, shall be void and of no effect provided that any plan adopted by the General Assembly prior to the first day of the regular session of 1973 in conformity with Sections 2, 3, 4 and 5 of this Article, as amended in 1972, shall not be

void, but shall become law immediately upon the adoption of the amendment. The adoption of these amendments in 1972 does not affect the election, tenure, powers, privileges, and duties of any member of the General Assembly in office when these amendments become effective, for the remainder of the term for which he was elected.